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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/639,056

08/12/2003

George L. Bennett

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09/08/2004

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EXAMINER

FREAY, CHARLES GRANT

ART UNIT

PAPER NUMBER

3746

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/639,056

Applicant(s)

BENNETT ET AL.

Examiner

Charles G Freay

Art Unit

3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 24 March 2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed March 24, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Copies of the following references were not provided and therefore have not been considered: references GG and CB-CF on the applicant's PTOL-1449.

Specification

The disclosure is objected to because of the following informalities: on page 5 the status of US Pat. Application Serial No. 09/867,359 should be updated.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are vague and indefinite because it is unclear what makes up the "fuel metering unit" in the claims. Is it the variable displacement pump, the valves and actuator controlling the pump, or the combination of the pump, actuator and valves? This is especially confusing in claim 5 where the static line is said to be between the fuel metering unit and the pressure regulator, and in claim 7 where the metering valve is said to control output from the fuel metering unit.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4 and 11-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Maker et al (USPN 6,412,271).

Maker et al disclose a variable displacement fuel pump (28) and a method for regulating fuel flow to an engine comprising a metering valve (42), a flow line creating a spill return flow (near C in Fig. 5), a pressure regulator (outer part 45 of pressure drop and spill valve 43) in fluid communication with the flow line which receives the spill return flow, and a control valve (radially central valve controlling port 46) for regulating spill to prevent excess heat generation by setting a displacement of the pump. The control valve is connected to a servo mechanism (26) which varies pump displacement.

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Each of the pressure regulator and the control valve are responsive to pressure differences across the respective valve member. Additionally, there is a static flow line between the output of the pump and the pressure regulator (the static line is the first branch line from passages 41). Note columns 5 and 6 for a complete discussion of the device.

Claims 1, 2 and 17-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Reuter et al(USPN 5,715,674).

Reuter et al disclose a variable displacement fuel pump (104) and a method for regulating fuel flow to an engine comprising a metering valve (136), a flow line creating a spill return flow (188), a pressure regulator (164) in fluid communication with the flow line which receives the spill return flow, and a control valve (208) for regulating spill to prevent excess heat generation by setting a displacement of the pump. The control valve is connected to a servo mechanism (108) which varies pump displacement. Each of the pressure regulator and the control valve are responsive to pressure differences across the respective valve member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over either of Reuter et al or Maker et al.

As set forth above each of Reuter and maker et al disclose the invention substantially as claimed but do not disclose that the servo mechanism is a half area servo mechanism. As defined in the specification the half area servo mechanism has to do with one of the pressures being half the pressure which is on the opposite side of the actuator piston. At the time of the invention it would have been obvious to one of ordinary skill in the art to determine the correct pressures and piston areas upon which the pressures act for the servo mechanism in accordance with the desired response time and required forces to be applied against the displacement actuator.

Allowable Subject Matter

Claim 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 7-10 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

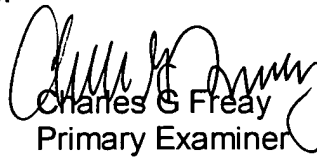
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G Freay whose telephone number is 703-308-0639. The examiner can normally be reached on Monday through Friday 10:00 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 703-308-2675. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Charles G. Freay
Primary Examiner
Art Unit 3746

CGF
September 3, 2004